Supreme Court, U.S.
FILED

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No

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1993

MAGNOLIA COURT APARTMENTS, INC.,

Petitioner,

vs.

D. SCOTT CARLSON, As Commissioner of the Department of Housing of the City of Atlanta, MURIEL MITCHELL, As Director in the Department of Housing of the City of Atlanta, and the CITY OF ATLANTA,

Respondents

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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28 pp

QUESTIONS PRESENTED FOR REVIEW

1.

Did the failure of the City of Atlanta (City) to provide adequate police protection to an apartment project (Magnolia) against drug dealers, vandals, thieves and burglars constitute the denial of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States?

2.

Is Magnolia entitled to recover damages from the City for failure to provide adequate police protection against drug dealers, vandals, thieves and burglars?

3.

After Magnolia ceased to operate its apartment project because of the failure of the City to provide proper police protection and in order to avoid liability lawsuits from tenants, was the attempt by the City to enforce violations of the building code

illegal as selective enforcement of the law when the City was not enforcing the same building code against 2,000 other apartment units in Atlanta and was such selective enforcement of the law a denial of equal protection of the law?

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No._____

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MAGNOLIA COURT APARTMENTS, INC.,

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vs.

D. SCOTT CARLSON, As Commissioner of the Department of Housing of the City of Atlanta, MURIEL MITCHELL, As Director in the Department of Housing of the City of Atlanta, and the CITY OF ATLANTA,

Respondents

PETITION FOR A WRIT OF CERTIORARI

TO THE COURT OF APPEALS OF THE STATE OF GEORGIA

The Petitioner (Magnolia) respectfully prays that a Writ of Certiorari issue to review the judgment of the Court of Appeals of

the State of Georgia, dated and entered on January 7, 1994, which simply adopted the opinion of the trial court wherein the trial court held that Plaintiff was not denied equal protection of the laws. Both judgments are set forth in the Appendix.

Magnolia's Motion for Rehearing, dated January 13, 1994, in the Court of Appeals of the State of Georgia was denied. Magnolia's Petition for Certiorari to the Georgia Supreme Court was denied on February 28, 1994.

The jurisdiction of this Court to review the Order of the Court of Appeals of the State of Georgia, dated and entered on January 7, 1994, is evoked under 28 U.S.C. Section 1257 upon the grounds that Magnolia has been deprived of the equal protection of the laws as provided in Amendment Fourteen to the Constitution of the United States, which reads in pertinent part as follows: "No state shall . . .deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF CASE
EQUAL PROTECTION OF LAWS

In the City of Atlanta Magnolia built, owned and operated a 95 unit apartment project until the fall of 1989.

In 1989 some people moved into some of the apartments and were engaged in selling addictive drugs to the public. The fact that some drugs were being sold in the apartments was reported to Magnolia. Neither Magnolia nor its real estate agent had any way to identify who were drug dealers. Magnolia's resident manager called the police after some shooting took place upon the apartment premises. Shortly thereafter someone tried to shoot the manager, because he sought police action against the drug dealers, and he resigned his position and vacated his apartment. On two occasions Magnolia made reports to the Atlanta Police Department that there were people in Building 11, Anderson Avenue who were selling drugs and asked the police to do what they could to stop it. Magnolia reported the drug problem to the office of the Chief of Police and asked that

office to get the drug people out of the apartments. Magnolia told the police that, according to information furnished to Magnolia, some people were selling drugs out of the windows of the apartment and even stopping people on adjoining streets and attempting to sell them drugs. Magnolia does not know what the police did or did not do because Magnolia never received any information from the Police Department.

The drug problem became so acute that Magnolia decided to close the apartments to avoid any liability arising out of the fact that the drug people were engaged in their activities of selling drugs. In the fall of 1989 Magnolia cancelled all the leases of its tenants effective November 30, 1989. Although all the parties with leases finally moved out of the apartments by the middle of December 1989, the drug people did not. Sometime early in 1990 someone was shot and killed on the premises.

After all the leases were cancelled as of November 30, 1989, vandals immediately moved in. On December 1, 1989 all of the doors were inspected and locked in all of the apartments; the vandals began to break down the doors.

About the middle of December 1989, the doors were again inspected and locked and the vandals again broke open the doors. The vandals broke most of the window panes; they stole refrigerators, stoves, hot water heaters; they destroyed some of the interior walls in order to remove piping and plumbing fixtures and they took the pipes and plumbing fixtures off the premises. Magnolia had installed a four foot chain link fence with barbed wire on three sides of the property, total length of which was 1,276 feet. The fourth side already had a fence installed by the adjoining neighbors. Vandals cut the fence in many places in order to get on the premises. The chain link fence was repaired and the barbed wire was replaced and the vandals again cut passages through the fence and in one place knocked down completely about 100 feet with some kind of machine. We reported all this vandalism to the Police Department. The stealing took place both in the daytime and nighttime and sometimes in truck loads.

The City has provided police protection for many public housing projects in Atlanta but has not assigned similar protection at any time for the persons and property at Magnolia.

We rely on the following cases:

(1) Hartford Steam Boiler &c. Ins. Co. vs. Harrison, 301 U.S. 459 461 (57 Sup Ct. 838, 81 L. ed 1223), quoting from another United States Supreme Court case, and with reference to the equal-protection guaranty, it was said that "it may be said generally that the equal-protection clause means that the rights of all persons must rest upon the same rule under similar circumstances, Kentucky Railroad Tax Cases, 115 U.S. 321, 337 (6 Sup Ct. 57, 29 L. ed 414); Magoun v. Illinois Trust & Savings Bank, 170 U.S. 283, 293 (18 Sup.Ct. 594, 42 L. ed 1037), and "that it applies to the exercise of all the powers of the State which can affect the individual or his property."

(2) Hughes v. Reynolds, Solicitor General, 223 Ga., 727 at p.730: "Where laws are applied differently to different persons under the same or similar circumstances, equal protection of law is denied.

(3) City of Calhoun v. North Georgia &cCorp., 233 Ga., 759 at p. 770: "As

this constitutional provision has been repeatedly interpreted by this Court, "It is only in case where laws are applied differently to different persons under the same or similar circumstances that the equal protection of the law is, denied."

(4) C&S National Bank v. Mann, 234 Ga., 884 at p. 889.

(5) Reed v. Hooper, 235 Ga. 298 at p.300.

(6) Dorsey v. City of Atlanta, 216 Ga. 778.

(7) Mayor &c of Savannah vs. Savannah Distributing Company, Inc., 202 Ga. 559 at page 575.

Magnolia has no parent or subsidiary corporation.

SELECTIVE ENFORCEMENT

There are more than 2,000 units of housing in Atlanta which have been declared by Atlanta as open, vacant and unfit for human habitation."Open" means there are no entrance doors or that they are unlocked."Vacant" means that there are no people living on the premises. "Unfit for human habitation" is a phrase used by Atlanta to designate housing units which do not meet the Housing Code Regulations. The City has notified the owners of these 2,000 units that they are in violation of the code but the City has not enforced the city ordinances as to these 2000 units in the same way they are attempting to enforce the city ordinance against Magnolia. The City has even threatened to demolish Magnolia and charge Magnolia for the cost of the demolition. City has not made those threats to the other 2,000 similar situated housing units. Appellee Carlson, Commissioner of the Department of Housing of the City of Atlanta, testified in his deposition as follows:

Q." Are you aware that they've got a backlog of a thousand housing units in the City of Atlanta just like Magnolia?

A. Yes, I am. In fact, I would think the number is probably a little larger than that.

Q. At one time he told me it was two thousand, two years ago.

A. Let me give you an example. In the Public Housing Authority itself at any one year's time more than a thousand units are vandalized and are rendered unfit for habitation."

In paragraph 15 of the original complaint filed by Magnolia against the City, it was alleged as follows: "The failure of the City to provide proper police protection against drug dealers and against vandals, thieves and burglars, as alleged hereinabove, constitutes the denial of the equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Article 1, Section 1, Paragraph 2 of the Constitution of the State of Georgia and these constitutional violations entitled Magnolia to injunctive relief. The City has provided police protection for persons and property at Techwood Homes, Perry Homes and other public housing projects but has not assigned similar protection at any time for the persons and property at Magnolia Court Apartments."

The judgment of the trial court, which was adopted by the Court of Appeals of the State of Georgia, reads in part as follows: "Defendants (City) are entitled to summary judgment on Plaintiff's (Magnolia) claim of inadequate police protection in violation of the equal protection laws."

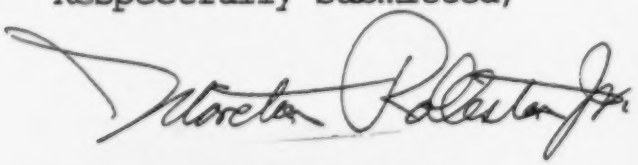
CONCLUSION

The failure of the City of Atlanta to provide adequate police protection against drug dealers, thieves and burglars violates the Equal Protection clause of the Fourteenth Amendment and renders the City liable for damages resulting therefrom.

The failure to provide police protection also violates the second sentence in the Constitution of the State of Georgia, which reads as follows: **"Protection to person and property is the paramount duty of government and shall be impartial and complete"**.

Crime is perceived as the number one problem and concern in America. The failure to solve our crime problem has produced great cynicism about our judicial system. It has raised questions in the minds of our people about the effectiveness of court and the roles of lawyers in the protection of criminals. The Legislative and Executive branchs of both our local and federal government have tried and failed to solve the crime problem. As in the case of other national dilemmas, it is left to the courts to produce the solution. We submit that one of the solutions is to make cities financially responsible for failure to provide adequate police protection.

Respectfully submitted,



Moreton Rolleston, Jr.
Counsel of Record for
Magnolia Court Apartments, Inc

APPENDIX

APPENDIX

FIRST DIVISION
MCMURRAY, P.J.
JOHNSON & BLACKBURN

Not To Be
Officially Reported

NOTICE: MOTIONS FOR RECONSIDERATION MUST BE RECEIVED IN OUR CLERK'S OFFICE WITHIN TEN DAYS OF THE DATE OF DECISION to be deemed timely filed.
(Court of Appeals Rules 4 & 48, Mar. 1,1985)

JANUARY 7, 1994

In the Court of Appeals of Georgia

A93A2288. MAGNOLIA COURT APARTMENTS, INC. v. CARLSON, et al

JO-151.

JOHNSON, Judge.

Magnolia Court Apartments, Inc., through its principal shareholder, Moreton Rolleston, brought this action against the City of Atlanta and others alleging damages resulting from denial of equal protection of the law due to selective enforcement of the Atlanta Housing Code and inadequate police protection.

Plaintiff alleges that because the police failed to purge the Magnolia Court Apartments of drug dealers, the corporation was forced to evacuate the entire complex and leave it

vacant. Thereafter, the property was vandalized and looted. Vagrants took up residence in the buildings from time to time. Eventually, the city brought an in rem action ordering violations of the housing code and ordering the owners to clean up and repair the premises or to close the buildings and secure them by installing an eight-foot chain link fence around the property. Plaintiff claims that the trial court's grant of summary judgment in favor of the defendants was error.

After a review of the record, we find that the trial court has fully and correctly addressed the issues in this case in its order of April 23, 1993. Accordingly, the order is hereby adopted as the opinion of this court.

The city's motion for imposition of frivolous appeal penalties is denied.

Judgment affirmed. McMurray, P.J. and Blackburn, J., concur.

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

MAGNOLIA COURT APARTMENTS, INC.,	:	
Plaintiff	:	C.A. No. D-92525
vs.	:	
D. SCOTT CARLSON, as Commissioner of the Department of Housing of the City of Atlanta, et al,	:	
Defendants.	:	

ORDER ON MOTIONS

This case came on regularly for hearing on defendants D. Scott Carlson, Muriel Mitchell and the City of Atlanta's (City) motion for summary judgment or in the alternative to set aside injunction, and plaintiff Magnolia Court Apartments, Inc.'s (Magnolia) motion for summary judgment. After consideration of the motions and all other

papers of record this court enters the following order.

FACTS OF THE CASE

On January 10, 1990, defendant City's Bureau of Buildings conducted an inspection of the Magnolia Court Apartments (the property). The inspection revealed violations of sections 25 and 29 of the Atlanta Housing Code. Plaintiff Magnolia was given thirty days to correct the violations. Plaintiff Magnolia appealed the finding of the Bureau of Buildings to the Housing Appeals Board. On February 13, 1990, the Housing Appeals Board issued its final determination granting plaintiff Magnolia a seventy-five day extension within which to either comply with the Atlanta Housing Code or have the property sold. On January 2, 1991, defendant City sent plaintiff Magnolia an official corrected notice specifying violations of the Atlanta Housing Code. A hearing was conducted before the In Rem Review Board on January 31, 1991. The In Rem Board issued an order confirming the existence of Atlanta Housing Code violations. Plaintiff Magnolia was directed to

either repair or clean the premises, or vacate and close the buildings within thirty days and to install an eight-foot high chain link fence around the property. On August 7, 1991, plaintiff Magnolia instituted the present action alleging denial of equal protection of the law due to selective enforcement of the Atlanta Housing Code by defendant City and inadequate police protection, resulting in damages of four hundred thousand dollars ($400,000) in lost profits and property damage.

RULINGS

1. Defendant D. Scott Carlson, Murjel Mitchell and the City of Atlanta's motion for summary judgment.

Defendants move this court for summary judgment on the grounds that plaintiff Magnolia's pleading fail to establish either selective enforcement of the Atlanta Housing Code or inadequate police protection as a matter of law.

The Constitution of the State of Georgia provides in Article I, Section I, paragraph II: "No person shall be denied the equal protection of the laws." As plaintiff Magnolia does not allege that it has been

subjected to a classification drawn on the basis of race, sex or other suspect classification, the statutory classification is presumed valid and comports with constitutional standards unless Magnolia shows that it was singled out for enforcement without any rational basis. Georgia Dept. of Nat. Resources, Environmental Protection Division v. Union Timber Corp., 258 Ga. 873 (3) (375 S.E. 856) (1989); McDaniel v. Thomas, 248 Ga. 632, 638 (285 S.E. 2d 156)(1981) "To be a constitutional violation, the selective enforcement must represent an intentional and purposeful discrimination based upon some unjustifiable standard . . . or other arbitrary classification (emphasis in original)." Georgia Department of Nat. Resources, supra. Plaintiff has the burden of presenting sufficient evidence of intentional or purposeful discrimination. State v. Causey, 246 Ga. 735 (2) (273 S.E.2d 6) (1980). Merely showing that other persons or classes or persons may have violated the law without being prosecuted does not carry this burden. Georgia Dept. of Nat. Resources, supra.

In the present action plaintiff Magnolia alleges only that "[t]here are more than 2,000 units of housing in the City of Atlanta unfit for human occupancy . . .[and] the City has not enforced the city ordinance . . .as to

these other 2,000 units. . ." Plaintiff's complaint, Sec 14. Plaintiff Magnolia alleges no intentional or purposeful discrimination against it by the City of Atlanta. Plaintiff Magnolia's pleadings merely claim that other persons are in violation of the housing code and have not yet been prosecuted. Pursuant to Georgia Dept. of Nat. Resources, supra, plaintiff Magnolia fails to meet its burden, and defendants are entitled to summary judgment on this issue.

Plaintiff Magnolia also contends that it is the victim of inadequate police protection in violation of its right to equal protection and entitling it to damages for lost profits and stolen and vandalized property. The aforementioned equal protection analysis is applicable to plaintiff Magnolia's claim of inadequate police protection. Plaintiff Magnolia fails to establish or allege any intentional or purposeful discrimination against it based on an arbitrary classification. For this reason, defendants are entitled to summary judgment on plaintiff Magnolia's claim of inadequate police protection in violation of the equal protection clause.

With regard to plaintiff Magnolia's claim for damages against defendants for inadequate police protection, the Georgia Supreme Court

has recently spoken directly on this issue. In City of Rome v. Jordan, __ Ga.__(Case No. S92G907, decided March 15, 1993), 93 FCDR 960 (March 26, 1993), the court held that a municipality's breach of its general duty to protect the public does not impose liability for damages to an injured individual in the absence of a "special relationship" between the municipality and the individual. A "special relationship" exists if the municipality assures the individual that it will act on its behalf, knows that its inaction could harm the individual, and the individual detrimentally relies on the affirmative undertaking. City of Rome, supra.

In the present action, plaintiff Magnolia fails to allege or establish that a special relationship" existed between it and defendant city. Plaintiff Magnolia merely contends that it notified the police of drug sale and vandalism at the property. Plaintiff Magnolia fails to establish that even one of the three conditions necessary to show a "special relationship" are present in this action, and summary judgment in favor of defendants is appropriate on this issue.

To prevail at summary judgment under O.C.G.A. Sec. 9-11-56, the moving party must demonstrate that there is no genuine issue of

material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. Lau's Corp. Inc. v. Haskins, 261 Ga. 491, 495 (405 S.E. 2d 474) (1991). Defendant's motion demonstrates that defendants are entitled to judgment as a matter of law.

Based on this Court's ruling that defendants are entitled to summary judgment, the temporary injunction granted by this court on August 7, 1991, is set aside.

For the foregoing reasons, defendants D. Scott Carlson, Muriel Mitchell, and the City of Atlanta's motion for summary judgment is granted.

2. Plaintiff Magnolia Court Apartments, Inc's motion for summary judgment.

For the reasons set forth in division 1, supra, plaintiff Magnolia Court Apartments, Inc.'s motion for summary judgment is denied.

This 23 day of April, 1993.

/s/ William H. Alexander
Judge

Copies to:
Josette M. Chambers, Esq.
Moreton Rolleston, Jr., Esq.